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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,535	10/31/2003	Lee A. Nosbisch	NR8675US	2703
22203	7590	05/10/2005	EXAMINER	
KUSNER & JAFFE HIGHLAND PLACE SUITE 310 6151 WILSON MILLS ROAD HIGHLAND HEIGHTS, OH 44143			KASTLER, SCOTT R	
			ART UNIT	PAPER NUMBER
			1742	

DATE MAILED: 05/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/699,535	NOSBISCH, LEE A.
	Examiner	Art Unit
	Scott Kastler	1742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-22 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 31 October 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.

- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_.

***Claim Objections***

Claim 2 is objected to because of the following informalities: The above claim is informal because there is no antecedent basis for the term “said contoured ramp surface” on line 1 of this claim. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-16 are rejected under 35 U.S.C. 102(b) as being anticipated by each of Erny or Erny et al. each of Erny and Erny et al teach a lining including a set of starter bricks (refractory components) for a ladle which could be employed for starting a spiral brick lining if desired, where the refractory components (30), which include at least 4 in the set, have a planar bottom surface, an upper surface which is flat and “contoured” (since without further description even a flat surface has a contour, since no refractory surface is perfectly flat), end surfaces (33, 34) dimensioned to fit together to form a ramp surface having a leading end (40) and trailing end (41) and where the trailing end ramp surface meets the relative definition of “nearly horizontal”, thereby showing all aspects of the above claims, since both the actual manner or method of use of the claimed refractory set for the starting of a spiral lining (rather than the leveling use cited by both of Erny and Erny et al) cannot be relied upon to fairly further limit claims to the apparatus itself where, as in the instant case, the applied prior art apparatus could perform the

claimed function. See MPEP 2114, 2115 and *In re Casey*, 152 USPQ 235; and the manner in which the claimed components are manufactured (cast or pressed) without any showing of a material difference in the final article itself, also cannot be relied upon to fairly further limit claims to the apparatus or article itself. See MPEP 2113 for example.

Claims 17-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Williamson et al. Williamson et al teaches a ladle lining including courses of refractory brick (28) with a starter set (27) of refractory bricks between,(see col. 9 lines 15-25 for example) where the starter set is formed of a set of at least 4 refractory bricks and form a contoured ramp with leading and trailing ends dimensioned so that adjacent ends mate with each other, thereby showing all aspects of the above claims.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Each of Napora, Kelsey and Hannah are also cited as further examples of prior art refractory brick sets.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Kastler whose telephone number is (571) 272-1243. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King can be reached on (571) 272-1244. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Scott Kastler  
Primary Examiner  
Art Unit 1742

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